

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF OHIO  
3 WESTERN DIVISION  
4 -----)

5 BLAKE BEST individually,

6  
7 Plaintiffs,

8  
9  
10 -against-

11 AT&T, INC., a Delaware Corporation,  
12 AT&T MOBILITY, LLC, a Delaware  
13 Limited Liability Company,  
14 Defendants.

FILED  
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FEB 10 PM 12:44  
U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION  
Civ. Action No: 1:12-CV564

Honorable Judge: Michael

Ryan Barrett

Honorable Magistrate Judge

Karen L. Litkovitz

JURY DEMANDED

REVISED THIRD AMENDED

COMPLAINT FOR

FOR PERMANENT INJUNCTION

AND OTHER EQUITABLE RELIEF

**REVISED THIRD AMENDED COMPLAINT**

Pro Se/Plaintiff herein after Plaintiff (as defined below) submit this revised third amended complaint pursuant to the Court's January 13, 2014 Order (Doc. No. 136).

1. This is a civil action seeking damages and injunctive relief for Copyright Infringement under the United States Copyright Act pursuant to 17 U.S.C § 101 et seq. and other claims and allegations as defined herein.

2. Plaintiff is informed and upon such information alleges according to definition and terminology: Funmobile/Mobilefunster, Christian Kwok Leun Yau Heilesen herein after "aggregators" Plaintiff alleges as follows:

**I. INTRODUCTION**

3. Plaintiff created and sold ringtone content, designed to be transmitted over wireless carrier's network to and from mobile devices. Plaintiff was seeking to become the first African American Aggregator to transmit ringtones through major wireless carriers through the assistance of ("AT&T") and Civil Rights Activist Joseph Beasley. Plaintiff is author of the United States copyright sound recordings PA 1-633-253, prima facie evidence (Exhibit A).

4. Plaintiff commenced this action on July 25, 2012 to seek damages for unlawful copyright infringement and other actions. Upon review of the informal discovery and evidence. Plaintiff has added ("AT&T"), who are revealed as John Does 1 and 2 of the Second Amended Complaint (Doc. 94). Plaintiff was introduced to Mobile Streams by ("AT&T"). Mobile Streams a direct aggregator of ("AT&T"), who submitted Plaintiffs' ringtones to

1 Funmobile/Mobilefunster and other wireless carriers. Plaintiff also submitted his  
2 sound recordings to ("AT&T").  
3

4 5. Plaintiff is informed and upon such information alleges according  
5 to the fact, Plaintiff was unaware that Funmobile/Mobilefunster also a ("AT&T")  
6 "aggregators" were selling Plaintiffs copyrighted sound recording through the  
7 ("AT&T") network.  
8

9 6. Plaintiff is informed and upon such information alleges according to  
10 the fact, Plaintiff has uncovered information suggesting that ("AT&T") retained a  
11 direct profits from the infringing acts while declining to exercise a right to stop or  
12 limit it. Furthermore, ("AT&T") had the capacity to supervise the infringing  
13 activity. Plaintiff corresponded to ("AT&T") that Plaintiffs' ringtones were being  
14 infringed by its third party "aggregators." Whereas, Plaintiff suggested ways  
15 ("AT&T") could implement an effective system at minimum cost to prevent third  
16 party "aggregators" from infringing content through their network.

17 7. Plaintiff is informed and upon such information alleges according to  
18 the fact an, example of the likely network: Customer A visits a operated by  
19 mobile content provider that sells ringtones for \$1 to \$3 each. Customer A enters  
20 his or her wireless telephone into a field on the website, and the desired ringtone is  
21 sent through a network to his or her wireless device. Mobile content provider then  
22 sends Customer A's telephone number and the responding charge information to a  
23 billing aggregator (a middleman of sorts who has relationships with major wireless  
24 carriers such as (AT&T, Sprint and T-Mobile). The aggregator, in turn, instructs  
25 Customer A's wireless carrier to place the charge on Customer A's cell phone.  
26

27 8. Plaintiff, is engaged in ringtones and technology, and based on  
28

1 Defendants conduct have not continued the practice of producing or promoting  
2 any ringtones. Furthermore Plaintiff sound recordings were removed from the  
3 AT&T network at Plaintiffs request on or about Wednesday, October 24, 2012.

4  
5 9. Plaintiff is informed and upon such information alleges according  
6 to the fact, and now evidence reveal ("AT&T") share in the liability, while one  
7 aggregator was authorized to sell Plaintiffs ringtones through their network  
8 to ("AT&T") subscribers, another aggregator Mobile Streams through  
9 Funmobile/Mobilefunster were selling Plaintiffs' ringtones were ("AT&T")  
10 received a direct profit. Upon recently discovering ("AT&T's") "aggregators"  
11 were infringing Plaintiff's ringtones through their network from profits, it  
12 became apparent why ("AT&T") had a different set of Plaintiffs'  
13 authorized ringtones on its network then the "aggregators" had  
14 on their own site which was unauthorized. It also became clear to Plaintiff why  
15 ("AT&T") provided Plaintiff with a short code and placed its ringtones where  
16 it was hard for subscribers to find, because their "aggregators" were  
17 unlawfully selling Plaintiff's ringtones allowing ("AT&T") to gain a profit.

18 10. Plaintiff is informed and upon such information alleges according to  
19 the fact, Plaintiffs' initial catalogue of ringtones showed strong sales in AT&T's  
20 "What's Hot" then they were removed and a second set of Plaintiff's catalogue  
21 were uploaded to the AT&T site which were hard to locate by their subscribers.  
22 Plaintiff believes, this was a tactic to allow the "aggregators" to sell  
23 Plaintiffs ringtones through AT&T's network, where there would be no confusion  
24 of sales from Plaintiff's ringtones by their "aggregators". In 2008, while  
25 Plaintiffs' authorized copyrighted sound recordings, were featured in AT&T's  
26 "What's Hot", it demonstrated popularity with steady sales, which were  
27 described by AT&T's Senior VP as good "seeing that yours ringtones are not from  
28

1 a known celebrity.”

2  
3 11. Plaintiff is informed and upon such information alleges according  
4 to the fact, Plaintiff's ringtones sound recording were popular after having  
5 survived, AT&T's test market, were Plaintiff was notified through email by  
6 (“AT&T's”) Attorney Timothy Johnson, that Plaintiff's ringtones may be  
7 removed, if the outcome of the study is not successful. Upon email notification  
8 Attorney Johnson notified Plaintiff that the marketing department will allow  
9 Plaintiff's ringtones to remain. Further evidence proves (“AT&T”) subscribers,  
10 customers and/or users purchases showed of steady sales during this period.

11 12. Plaintiff is informed and upon such information alleges  
12 according to the fact, due to the infringement and practices of Defendants  
13 and their “aggregators”, Plaintiff would have enjoyed tremendous success  
14 with his copyrighted sound recordings. It would seem if Plaintiff's  
15 copyrighted sound recordings, were not popular and had very minimum  
16 sales, then why would the (“AT&T”) “aggregators” continue to  
17 feature Plaintiff's ringtones for sales, after multiple request in 2009 followed  
18 with a cease and desist letters and repeated request in 2012 for them to  
19 be removed preventing the actions set forth in this complaint?  
20 (“AT&T”) “aggregators” also delivered Plaintiffs ringtones to Canada  
21 wireless carriers through interactive websites and through the network of  
22 AT&T. Plaintiff have sustained, and continue to sustain, substantial  
23 financial losses.

24  
25 13. Plaintiff is informed and upon such information  
26 alleges according to the fact, Plaintiffs' Copyrighted sound recordings that can  
27 be used as ringtones on customer's mobile phones, has secured these rights with  
28 the United States Copyright Office. (“AT&T”) “aggregators” have for years

1 distributed Plaintiff's copyrighted sound recordings. Plaintiff Copyrighted sound  
2 recordings are also protected under United States Common Trademark law, which  
3 Plaintiff's "Mark" is Slangtones which serves to indentify Plaintiff in the  
4 marketplace is the source of the works which are unlawfully made available for  
5 sale to millions of subscribers.

## 7 II. NATURE OF DISPUTE

8  
9 14. Plaintiff is informed and upon such information alleges  
10 according to the fact, ("AT&T") have profited from Plaintiffs' copyrighted  
11 works, disregarding knowledge that their "aggregators" were  
12 infringing on Plaintiff copyright and that ("AT&T") share in the liability,  
13 had knowledge or participated in the acts as reflecting matters since the  
14 filing of the original complaint. A growing trend as many artist and musicians  
15 such as Plaintiff who currently lack funding to retain counsel, and in many cases,  
16 many persons or companies who infringe upon works of arts, never get  
17 punished because the artist or musicians lacked financial resources to retain  
18 counsel in matters related to copyright infringement and other legal matters.

19 15. Plaintiff is informed and upon such information alleges  
20 according to the fact, ("AT&T") be it collectively, or individually have  
21 some active part to the allegations mentioned herein have engaged in a  
22 deliberate effort to copyright infringe and committed other acts and violations  
23 as outlined herein. Defendants "aggregators", in the pre-sale of  
24 tens of millions of ringtones downloads through its affiliates grossly  
25 underpaying royalties to Plaintiff. This is a civil action against Defendants.

26  
27 16. Plaintiff is informed and upon such information alleges  
28



1 according to the fact, ("AT&T") introduced Plaintiff to Mobile Streams so he  
2 might have a broader market to his copyrighted sound recordings. Now ("AT&T")  
3 share part in the liability of the dispute, because they were made aware their  
4 "aggregators" were profiting from Plaintiffs' ringtones, including its sells  
5 through Bell Mobility HSPA network known as Bell Canada, and they did nothing  
6 to stop the infringement upon which they received some financial benefit.

7  
8 17. Plaintiff is informed and upon such information  
9 alleges according to the fact, Defendants ("AT&T") have willfully infringed  
10 on Plaintiff copyright when they had knowledge of the infringing acts by  
11 assisting it's "aggregators" in selling Plaintiffs' ringtones without  
12 authorization and consent, and their "aggregators", had knowledge of the  
13 cease and desist letters which were served on or about August 9, 2009  
14 by Honigman Miller Schwartz and Cohn LLP, and Defendants thereby  
15 unlawfully profited from the unauthorized use of Plaintiffs sole and  
16 most important assets its ringtones.

17 18. Plaintiff is informed and upon such information  
18 alleges according to the fact, indeed, Defendants(s) have profited from  
19 the sale of Plaintiffs' most highly regarded and expressly restricted musical  
20 sound recordings. As a result Defendant aggregator Mobile Streams  
21 obstructive conduct regarding Plaintiffs' audit rights while their agreement  
22 were in full effect, and now that any agreement by ("AT&T") aggregator  
23 Mobile Streams have been cancelled. Plaintiff has a right to know the  
24 royalties derived from the sale of its ringtones by Defendants, and also as  
25 the result of their actions not to stop their "aggregators" from infringing  
26 after knowing there "aggregators" received cease and desist letters for  
27 the authorized sales of its valuable copyrights, Plaintiff has been harmed,  
28

1 pursuant to 17 U.S.C § 504(b) and (c).

2  
3 19. Plaintiff is informed and upon such information  
4 alleges according to the fact , October 4<sup>th</sup>, 2012 Plaintiff made another less  
5 formal request by electronic means through email to ask ("AT&T")  
6 "aggregators" to remove Plaintiff's content. October 5<sup>th</sup>, 2012, Plaintiff received  
7 a response email from Fumobile's Karen Oei, Senior Vice President of  
8 Operations of Funmobile Ltd, ("Paraphrase") who indicated that  
9 Mobile Streams provided the content to her company. She noted the content  
10 would be removed immediately. Karen Oei forwarded emails to  
11 Mobile Streams and Funmobile's Christian Kwok-Leun Yau Heilesen.  
12 Here Funmobile's Karen Oei, has clearly established "access" to  
13 Plaintiff's copyrighted sound recordings which were at all times  
14 substantially similarity and were copied and sold to subscribers, customers  
15 and/or users through Fumobile's/Mobilefunster's highly interactive websites  
16 to sell Plaintiff's sound recording to millions of AT&T mobile devices.

### 17 III. PARTIES

18  
19 20. Plaintiff/Pro Se Blake Best hereinafter ("Plaintiff") bring  
20 this action against: AT&T, Inc., a Delaware Corporation and AT&T  
21 Mobility, LLC, a Limited Liability Company is a wholly-owned subsidiary of  
22 AT&T, Inc. collectively hereinafter ("AT&T").

23  
24 A. Plaintiff is a resident Of Ohio whom address is  
25 5392 Northbend Road Cincinnati, Ohio 45247;

26  
27 C. Plaintiff is informed and upon such information  
28 alleges according to the fact, that Defendant s AT&T, Inc. who is a



1 Delaware corporation hereinafter ("AT&T") with its principle place of  
 2 business at 208 Akard Street, Dallas Texas 75202 and regularly does  
 3 business throughout this judicial district. AT&T's registered agent for service  
 4 of process in Delaware The Corporation Trust Company 1209 Orange  
 5 Street Wilmington, New Castle DE 19801.

6  
 7 D. Plaintiff is informed and upon such information  
 8 alleges according to the fact. Defendant AT&T Mobility LLC, formerly  
 9 named Cingular Wireless, LLC, is a Delaware Limited Liability company with  
 10 its principal place of business at 1025 Lenox Park Blvd, NE, Atlanta  
 11 Georgia 30319 and does business throughout this judicial district.  
 12 AT&T's registered agent for service of process in Delaware is The Corporation  
 13 Trust Company, 1209 Orange Street, Wilmington New Castle DE 19801.  
 14 AT&T Mobility, LLC is a wholly-owned subsidiary of AT&T, Inc.  
 15 hereinafter ("AT&T").

#### 16 IV. SUMMARY OF CLAIMS

17  
 18 21. Plaintiff is informed and upon such information alleges  
 19 according to the fact, ("AT&T") are liable for the infringement acts through  
 20 Copyright Infringement 1976, 17 U.S.C. §§101,106, 501, Inducement of  
 21 Copyright Infringement 17 U.S.C. §106, Contributory Copyright Infringement 17  
 22 U.S.C. §106, Vicarious Copyright Infringement 17 U.S.C. §106), Common Law  
 23 Copyright Infringement, Federal Unfair Competition Under Lanham Act  
 24 15.U.S.C§ 125, Unfair Competition Under Ohio Law § 4165.02, Unfair Trade  
 25 Practices Under Ohio Law Ohio Rev. Code § 4165.02, Unjust Enrichment.  
 26  
 27  
 28

## V. JURISDICTION VENUE AND PARTIES

22. Plaintiff is informed and upon such information alleges according to the fact, This is a civil action seeking damages and injunctive relief for Copyright infringement under the Copyright Act, 17 U.S.C § 101 et seq. The Court has personal jurisdiction over (“AT&T”) because they do systematic and continuous business in Ohio, and has performed acts directed at and causing harm in Ohio which gives rise to this Complaint. Venue is proper in this District pursuant to 28 U.S.C § 139(b), (c) and 28 U.S.C § 1400(a). This Court has subject matter jurisdiction over Plaintiffs’ Copyright Act claims under 28 U.S.C. §§ 1331, 1332, and 2201. This Court has personal jurisdiction over (“AT&T”) under the test established in *Calder v. Jones*, 465 US 783 (1984), applying Colo. Rev. Stat. § 13-1-124. Venue is proper in this District under 28 U.S.C. § 1391 (b). This Court has jurisdiction over the federal claims in this action under the Trademark laws of the United States, Lanham Act Sections 32, 39, 43(a), and 43 (c)(I), 15 U.S.C. §§ 1114, 1121 and 1125(a)(c)(1), the Copyright Act, 17 U.S.C. § 101 et seq and the Judicial Code of the United States, 28 U.S.C. §§ 1331, 1338(a) and (b). This Court has supplemental jurisdiction over any common law and state statutory claims under 28 U.S.C. § 1367. (“AT&T”) by virtue of law outlined above have contact with the state of Ohio through interactive websites geared to Ohio residents.

23. Plaintiff is informed and upon such information alleges according to the fact, further, at all times relevant herein through its interactive website (“AT&T”) have targeted business efforts into the State of Ohio, subsequently Plaintiff had a prior agreement entered into with a

1 ('AT&T') aggregator Mobile Streams whereby Plaintiff is resident and citizen  
2 of the state of Ohio, thus further making this district the proper venue.

3 ("AT&T") highly interactive e-commerce website operates to sell goods  
4 and services into the state of Ohio, is directed at Ohio residents, and constitutes  
5 a substantial connection with the state of Ohio. Therefore, ("AT&T")  
6 has purposely availed itself of the privilege of conducting activities in  
7 Ohio. Furthermore, the unauthorized copying and selling of Plaintiff's  
8 copyrighted sound recordings arises directly out of the activities of  
9 its "aggregators" through its network and/or receiving profits from  
10 highly interactive e-commerce websites allow ("AT&T") jurisdiction to  
11 answer to the complaint in this district.  
12

13 24. Plaintiff is informed and upon such information  
14 alleges according to the fact, Plaintiffs' claims arise out of Defendants  
15 Ohio-related activity including email transmission to and from the state of  
16 Ohio. Discovery of the subscribers are necessary to further establish  
17 that ('AT&T') through its "aggregators" unlawfully sold Plaintiff's  
18 ringtones whereby ("AT&T") received revenue from Plaintiffs' sound  
19 recordings and had contact with the state Ohio.

20 25. Plaintiff is informed and upon such information  
21 alleges according to the fact, each Defendant is subject to this Court's  
22 specific and general personal jurisdiction pursuant to due process and/or the  
23 Ohio Long Arm Statue, due at least to each Defendant's substantial business  
24 in this forum, including: (i) at least a portion of the infringement alleged  
25 herein; and/or (ii) regularly doing or soliciting business, engaging in  
26 other persistent courses of conduct, and/or deriving substantial revenue  
27 from goods and services provided to individuals in Ohio and in this district.  
28

## VI. FACTUAL ALLEGATIONS

26. Plaintiff is informed and upon such information alleges according to the fact. Plaintiff developed the sound recording in 2006 developing additional ringtones in 2009 which a copyright registration number: PA 1-633-253. The sound recordings are copyright protected, pursuant to 17 U.S.C § 101. Plaintiff was a developer of sound recordings shown in the Copyright and registration. Defendant's exploited those rights through various licensing arrangements with their "aggregators."

27. Plaintiff is informed and upon such information alleges according to the fact, however Plaintiff is noted as author to the works of the sound recordings which allowed Plaintiff to develop various licensing arrangements mentioned herein, with third parties namely AT&T's aggregator Mobile Streams. This license generated profits, where Plaintiff, should have received a correct account of its royalties.

28. Plaintiff is informed and upon such information alleges according to the fact. Plaintiff developed these ringtones with distribution worldwide through the Nickels Group and Mobile Streams and has not enjoyed the true revenue from the sales of his ringtones. Plaintiff believes artist and their musical content are exploited because of industry accounting practices. Many "aggregators" distribute artist content to other affiliate websites which channel through wireless carriers network, those aggregators issue to the artist their royalty reports. Many of the affiliates were not listed on Plaintiff royalty report. In essence those affiliates and carriers would enjoy 100% profits of unreported royalty sales.

1       29.       Plaintiff is informed and upon such information  
2 alleges according to the fact, the Internet allows enormous opportunities  
3 for copyright infringement of artist works and musical compositions to  
4 be infringed and exploited. There are countless numbers of websites  
5 unlawfully selling ringtones and songs of copyrighted works, which  
6 compensation is never realized by the artist. Plaintiff believes the industry  
7 have a practice "If the artist don't, know don't tell". Allowing some  
8 companies that license musical works to not report the sales to the artist. Now  
9 the only way for the artist to learn that their works are being infringed upon, is  
10 to do Internet key searches of their works in hopes to uncover evidence  
11 of infringement.  
12

13       30.       Plaintiff is informed and upon such information  
14 alleges according to the fact, Plaintiff in 2009 uncovered a  
15 vast amount of websites selling Plaintiff's content which was not on the  
16 royalty report provided by ("AT&T") aggregator Mobile Streams,  
17 at which point, Plaintiff then inquired to Mobile Streams of this new  
18 found evidence of Plaintiff's ringtones being sold on sites not being reported  
19 on the royalty reports. However Plaintiff later to found out AT&T's  
20 "aggregators" unlawfully sold Plaintiff content through its network.  
21 Plaintiff then sent an email to Mobile Streams and AT&T's attorney  
22 Timothy Johnson of this information indicating that Plaintiff's ringtones  
23 were being sold on sites not being reported on the royalty report.  
24 Mobile Streams denied any claims that they provided Plaintiff's content to the  
25 sites in question. AT&T's attorney Timothy Johnson, indicated via email  
26 in paraphrase they could not intervene in that matter. Plaintiff's email  
27 to ("AT&T") Johnson and his response would establish ("AT&T") had  
28

1 actual knowledge of the infringing acts, which mentions the Plaintiff's  
2 ringtones that were being infringed, who was infringing and when the  
3 infringing was occurring. See *Ashcroft v. Iqbal* 556 U.S. 662, 678  
4 (2009). ("AT&T") knew of the infringement acts took steps to avoid  
5 acquiring knowledge.

6  
7 31. Plaintiff is informed and upon such information  
8 alleges according to the fact, ("AT&T") was "willfully blind" to the  
9 infringement. Plaintiff then retained counsel, who conducted a veracious  
10 search and sent out cease and desist letters to all infringing parties it was  
11 then discovered that the content was provided to those parties by  
12 Mobile Streams. Plaintiff's legal fees for this investigation and inquiry  
13 amounted to nearly \$20,000 dollars, when the AT&T aggregator Mobile  
14 Streams could have saved this expense by simply saying they provided  
15 Plaintiff's content to the websites.

16  
17 32. Plaintiff is informed and upon such information  
18 alleges according to the fact. Plaintiff is the owner of copyrights in and to  
19 the musical compositions at issue and have complied in all respects with  
20 the copyright acts and with all other applicable laws in securing  
21 copyright registrations and protecting and maintaining exclusive rights in  
22 and to Plaintiff' sound recordings. Defendants and their  
23 "aggregators" unlawfully made millions from Plaintiffs sound recording  
24 which were available for sale and downloaded to millions  
25 of subscribers, customers and/or users.



1        33.        Plaintiff is informed and upon such information  
2        alleges according to the fact. AT&T introduced Plaintiff to Mobile Streams  
3        and on or about June 12, 2006, Plaintiff and Mobile Streams entered into a  
4        one-year ringtone license with auto renewed, with the exceptions of  
5        cancellation by written notice. (the "Ringtone License") covering the  
6        World. Pursuant to the 2006 ringtone license, Plaintiff granted a license to  
7        Mobile Streams whereby Plaintiff agreed to license its copyrighted  
8        sound recordings, for which Plaintiff owned and controlled the exclusive  
9        rights. In accordance with the ("Ringtone License"), Plaintiff granted  
10       Mobile Streams the right to transmit the copyrighted sound recordings through  
11       its network of Internet providers and affiliates. Plaintiff's copyrighted sound  
12       recordings catalogue were available to subscribers for downloading onto  
13       wireless devices. The license agreement was not signed because Plaintiff  
14       wanted additional provisions to be added. Meanwhile Plaintiff acted on a  
15       verbal agreement, which included Plaintiff receiving royalty reports and  
16       payments from Mobile Streams; in return for the grant of rights upon  
17       Plaintiff's sound recordings; whereby Mobile Streams was to pay Plaintiff  
18       an agreed upon royalty rate for each copyrighted sound recording downloaded  
19       by subscribers/customers/users.

20  
21       34.        Plaintiff is informed and upon such information  
22       alleges according to the fact. AT&T's aggregator Mobile Streams and  
23       its affiliates were failing to keep accurate records occurring through their  
24       services, and failed to account properly to Plaintiff for the royalties which  
25       were owed. When Plaintiff attempted to exercise its contractual rights to go  
26       online to review the royalty report, access was denied. Plaintiff made  
27       verbal request to examine the books and reports of Mobile Streams, who  
28

1 refused to give Plaintiff access to material information, interposed  
2 frivolous objections to many of Plaintiff's request, and provided incomplete  
3 and inaccurate documentation.

4  
5 35. Plaintiff is informed and upon such information alleges according  
6 to the fact, moreover, throughout the term of the license agreements  
7 which existed, AT&T's aggregator Mobile Streams, blatantly and  
8 willfully infringed upon Plaintiff numerous valuable copyrights by (i)  
9 making Plaintiffs' ringtones available to affiliates that were not on the  
10 royalty report list. (ii) permitting worldwide downloading of Plaintiffs' ringtones.

11 36. Plaintiff is informed and upon such  
12 information alleges according to the fact, In light of Mobile Streams  
13 material breaches of the license agreements, Plaintiff did send email  
14 notifications to Mobile Streams to remove its content on or about  
15 December 23, 2009 in effect cancelling any agreement which may have  
16 existed. Although the agreement that existed was unsigned, Plaintiff and  
17 Mobile Streams acted on the agreement by virtue of the royalty checks and  
18 royalty reports that were received by Plaintiff. Even after the licensing  
19 agreement was expired or cancelled, AT&T's "aggregators" continued through  
20 to receive revenue from Plaintiffs' ringtones, thereby reaping an unlawful  
21 profit from the exploitation of Plaintiffs' sound recordings which were sold  
22 through the AT&T network.

23  
24 37. Plaintiff is informed and upon such  
25 information alleges according to the fact, because AT&T introduced  
26 Mobile Streams to Plaintiff, they were made aware through emails regarding the  
27 problems associated with their "aggregators." Where Plaintiff would send emails  
28

1 to AT&T's attorney Johnson and other key senior executives. ("AT&T")  
 2 had actual knowledge of specific acts and failed to consider possible  
 3 actions. Furthermore Plaintiff evidence should conclude that ("AT&T")  
 4 was "willfully blind" to the acts that were occurring. Through the emails that  
 5 was send by Plaintiff regarding the infringement by their "aggregators",  
 6 should have made officials believed that the infringement was likely occurring  
 7 on their networks and they took deliberate actions to avoid learning about  
 8 the infringement.

## 10 **A. COUNTS AND CAUSES OF ACTION**

### 11 **COUNT I**

#### 12 **(FIRST CAUSE OF ACTION COPYRIGHT**

#### 13 **INFRINGEMENT 1976, 17 U.S.C. §§101,106, 501)**

14  
 15 38. Plaintiff reallege and incorporate by reference each and  
 16 every allegation set forth above within paragraphs 1 through 37, inclusive,  
 17 as through fully stated herein.

18 39. Plaintiff is informed and upon such information alleges according to  
 19 the fact, ("A plaintiff claiming infringement of the exclusive-distribution right can  
 20 establish infringement by proof of actual distribution or by proof of offers to  
 21 distribute, that is, proof that the defendant 'made available' the copyrighted  
 22 work."); Arista Records, LLC v. Greubel, 453 F. Supp. 2d 961, 969, 971 (N.D.  
 23 Tex. 2006)

24  
 25 40. Plaintiff is informed and upon such information alleges according  
 26 to the fact, early August 2009, Plaintiff discovered through  
 27 an Internet search, his Copyrighted sound recordings; that various websites  
 28 were not reported on the Mobile Streams royalty report. Moreover,

1 these websites, were exploiting his work unlawfully offering Plaintiffs'  
2 sound recordings to millions of subscribers through ('AT&T') network  
3 allowing them to benefit from the proceeds. Plaintiff contacted Mobile  
4 Streams providing information that various websites were selling  
5 Plaintiff's ringtones. ("AT&T's") aggregator Mobile Streams, indicated they  
6 were unaware of any websites selling Plaintiffs' content outside the ones  
7 on the royalty reports. Subsequently, Plaintiff sought counsel to provide to  
8 those websites cease and desist letters. These letters Plaintiff hoped would  
9 stop these sites from further infringement. The letters also requested that  
10 these websites provide evidence of sales of Plaintiffs' sound  
11 recording. ("AT&T's") aggregator Mobile Streams was then made aware  
12 that any agreements between Plaintiff was to be cancelled.  
13 Whereby, Mobile Streams was then advised to have all content provided to  
14 third party providers removed, and that a sales report outlining sales from  
15 these sites of Plaintiffs' sound recording, be provided. After  
16  
17 Plaintiff's attorneys finished their copyright infringement investigation it  
18 was made known that Mobile Streams provided websites unlawfully  
19 with Plaintiffs' content.

20 41. Plaintiff is informed and upon such information alleges according  
21 to the fact, It would be understood by one ordinary person that such  
22 communications using counsel in this matter should have made AT&T  
23 "aggregators" aware that any further sales of Plaintiffs' sound recordings by any  
24 of its third party providers affiliates or subscribers would constitute  
25 willful infringement. Since the letters the Defendants have enjoyed a  
26 financial profit from the sales of Plaintiffs' sound recording. Whereby  
27 Defendants would continue throughout 2012 to allow its users and or  
28

1 subscribers to continue to purchase Plaintiffs' Copyright sound  
2 recordings ringtones, free of reprisal. It is Plaintiffs' intention to seek action  
3 and relief in this matter so that, this may not continue to happen.  
4 Each of Defendants copyright infringement referenced herein is willful with  
5 the meaning of 17.U.S.C. § 106. Plaintiff, has provided Defendant fair  
6 notice, were this complaint allege at lease some the particular infringing acts  
7 and times of occurrence with specificity.  
8

9 42. Plaintiff is exclusive owner and author of the sound recordings  
10 claiming infringement.  
11

12 43. Plaintiff is informed and upon such information alleges  
13 according to the fact, Defendants profited from the distribution and publication  
14 of these copyrighted works to their customers as they collected fees for  
15 each transfer/transmission but failed and /or refused to compensate Plaintiff  
16 as the holder, when they were aware their "aggregators" unlawfully sold Plaintiffs'  
17 sound recording through their network. The Fourth Circuit and numerous  
18 district court decisions have held that making a copyrighted work available for  
19 distribution to the public without authorization from the copyright holder violates  
20 the copyright holder's distribution right under §106(3). In Hotaling v. Church of  
21 Jesus Christ of Latter-Day Saints, 118 F.3d 199 (4th Cir. 1997).  
22  
23

24 44. Plaintiff is informed and upon such information alleges according  
25 to the fact, due to the tremendously large reach of Defendants there is a  
26 tremendous amount of copyright infringement of Plaintiffs' copyright.  
27

28 45. Plaintiff is informed and upon such information alleges according

1 to the fact, Defendants violated the Copyright Act pursuant to 28 U.S.C.  
2 § 501, in that Defendants, never requested from Plaintiff permission to  
3 profit from the sales of Plaintiff's Copyright sound recordings. Defendants  
4 never accounted for the amount of transactions generating from  
5 their "aggregators." Defendants, knowingly facilitated and willfully provided  
6 the means for its "aggregators" to distribute Plaintiffs' copyrighted  
7 sound recordings yet Plaintiff was never paid through these infringing acts,  
8 even after they provided knowledge to the Defendants the  
9 infringement was occurring. Therefore these actions are willful.

10  
11 46. Plaintiff is informed and upon such information alleges according  
12 to the fact, The infringement of each Plaintiffs' rights in each of the  
13 sound recordings and each time the works were distributed constitutes a  
14 separate and distinct act of infringement subject to 28 U.S.C. § 504.

15 47. Plaintiff is informed and upon such information alleges according  
16 to the fact, as a direct result of the foregoing conduct, Plaintiff is  
17 entitled to damages as against Defendants in an amount that is  
18 presently unknown.

19  
20 48. Plaintiff is informed and upon such information alleges according to  
21 the fact, As a direct result of Defendants' infringement Plaintiffs are entitled  
22 to the maximum statutory penalties under 17 U.S.C. § 504, in the amount  
23 of \$150,000 with respect to each timely registered work that was infringed,  
24 to disgorgement of Defendants' profits, and to any and all other relief the  
25 Court deems just and proper under law.

26  
27 49. Plaintiff is informed and upon such information alleges according  
28 to the fact, Defendants conduct has caused, and unless enjoined by this Court,



1 will continue to cause Plaintiff great and irreparable injury that cannot  
2 be compensated or measured in money. Plaintiff has no adequate remedy at  
3 law. Pursuant to 17 U.S.C § 502, Plaintiff is entitled to a permanent  
4  
5 injunction prohibiting further infringement of Plaintiffs' copyright.

6  
7 50. Plaintiff is informed and upon such information alleges according to  
8 the fact, Plaintiff is entitled to their cost, including reasonable attorney fees  
9 if one become available pursuant to 17 U.S.C § 505. Plaintiff has  
10 suffered economic damage and irreparable harm as a result of Defendants  
11 unfair acts hereon.

12 **COUNT II**  
13 **(SECOND CAUSE OF ACTION INDUCEMENT OF**  
14 **COPYRIGHT INFRINGEMENT 17 U.S.C. §106)**

15 51. Plaintiff reallege and incorporate by reference each and  
16 every allegation set forth above within paragraphs 1 through 38 and 39 through 51,  
17 inclusive as through fully stated herein.

18  
19 52. Plaintiff is informed and upon such information alleges according  
20 to the fact, ("AT&T") "aggregators" subscribers, users,  
21 customers and/or AT&T subscribers, users, customers have directly infringed and  
22 were directly infringing Plaintiff's copyrights on a daily basis by, for example  
23 purchasing reproductions of sound recordings embodying Plaintiffs' compositions  
24 in violation of Plaintiff's exclusive rights under the Copyright Act, 17 U.S.C. §  
25 106, et seq. The scope of the infringement is massive, encompassing millions of  
26 Plaintiff's sound recordings. Defendants are liable for inducing the copyright  
27 infringement of their aggregators.  
28

1 53. Plaintiff is informed and upon such information alleges according  
2 to the fact, Defendants continue to deal with Mobile Streams who uses  
3 "aggregators" that appear to depend heavily on infringing uses. Defendants' have  
4 knowledge of a past class actions settlements involving Funmobile/MobileFunster  
5 which involved Defendants. Allegations of copyright infringement to  
6 unauthorized charges still these companies utilize their network without fearing  
7 any repercussions in all likely hood they feel Defendants concerns is to just  
8 make profits from wrong doing, for which a blind eye is turned by the Defendants  
9 to the infringement activities, where they fail to modify their system to make it  
10 less capable of infringement or other wrongful acts by "aggregators".

11 54. Plaintiff is informed and upon such information alleges according  
12 to the fact, even yet Mobile Streams and Funmobile/Moiblefunster has even  
13 evaded or not responded to these proceedings. One of Plaintiff's contacts at  
14 Mobile Streams is Shane Gosling who can be reached at Defendants website.  
15 Funmobile/Mobilefunster recently removed it site [www.mobilefunster.com](http://www.mobilefunster.com) which  
16 also listed Defendants. The site is being redirected with the following note: "As a  
17 result of changes in mobile carrier policies we have discontinued service. AT&T  
18 users may continue to access these services through February 14, 2014. If you  
19 previously subscribed to this service, your account(s) have been cancelled.  
20 Previous subscribers will not receive any further messaging or charges from us  
21 after that date, If you have any questions about previous services, messages, or  
22 charges, please contact us at [help@sendme.com](mailto:help@sendme.com)."

23  
24 55. Plaintiff is informed and upon such information alleges according  
25 to the fact, Defendants willfully ignore knowledge that their aggregators were  
26 infringing and were provided with evidence whereby actively facilitating,  
27 encouraging and enticing their "aggregators" subscribers/users, customers to  
28

1 engage in the infringement. Defendants intended to bring about infringement.

2 56. Plaintiff is informed and upon such information alleges according to  
3 the fact, Defendants further have induced by, for example not insisting that  
4 their aggregators remove Plaintiff's copyrighted sound recordings and  
5 maintaining a business model to profit directly from infringing use, including sales  
6 to subscribers, users and or customers through their network. Through the conduct  
7 described above, Defendants are liable for inducing the infringement described  
8 herein. Each violation of Plaintiff's rights in and to each copyrighted sound  
9 recording constitutes a separate and distinct act of copyright infringement.  
10 Defendants' infringement has caused substantial damage and harm to Plaintiff. As  
11 a direct and proximate result of Defendants' infringement, Plaintiff is entitled to  
12 statutory damages under 17 U.S.C. § 504(c) for each of Plaintiff works that have  
13 been infringed through Defendants network. Defendants' infringement is and has  
14 been willful, intentional, purposeful, and in disregard of the rights of Plaintiffs'.  
15 The Court should therefore increase the award of statutory damages to up to  
16 \$150,000 per infringed works.

17  
18 57. Plaintiff is informed and upon such information alleges according to  
19 the fact, the identities of the infringed works and the total number of infringed  
20 works will be determined during discovery, and the pleadings adjusted  
21 accordingly. As an alternative to statutory damages (and for infringed works that  
22 do not qualify for statutory damages if any), Plaintiff at his election prior to profits  
23 of the Defendants attributable to the infringement. 17 U.S.C. § 504(a)-(b). Plaintiff  
24 is entitled to cost, including reasonable attorneys' fees, pursuant to 17 U.S.C. §  
25 505. Defendants' conduct has caused harm, and unless enjoined by this Court, will  
26 continue to cause Plaintiff great and irreparable injury that cannot be fully  
27 compensated or measured in money.

1 58. Plaintiff is informed and upon such information alleges according to  
 2 the fact, Plaintiff have no adequate remedy to law. Pursuant to 17 U.S.C § 502,  
 3 Plaintiff is entitled to a permanent injunction prohibiting further infringement of  
 4 Plaintiffs' copyright. At all times relevant to this action, ("AT&T") have had the  
 5 right and ability to control and/supervise the infringing conduct of their  
 6 "aggregators" subscribers, and (ii) have had a direct financial interest in,  
 7 and derived substantial financial benefit from, the infringement of Plaintiff's  
 8 copyrighted sound recordings. Plaintiff has suffered economic damage and  
 9 irreparable harm as a result of Defendants unfair acts hereon.  
 10

11  
 12 **COUNT III**  
 13 **(THIRD CAUSE OF ACTION CONTRIBUTORY**  
 14 **COPYRIGHT INFRINGEMENT 17 U.S.C. §106)**

15 59. Plaintiff reallege and incorporate by reference each and  
 16 every allegation set forth above within paragraphs 1 through 38 and 39 through 58,  
 17 inclusive as through fully stated herein.  
 18

19 60. Plaintiff is informed and upon such information alleges according to  
 20 the fact, ("AT&T") "aggregators" subscribers, customers  
 21 and users and/or AT&T subscribers, customers and users purchasing and  
 22 downloading Plaintiff's copyright sound recording have directly infringed and are  
 23 directly infringing Plaintiff's copyright on a daily basis by, for example  
 24 purchasing copying sound recordings embodying Plaintiff's copyrighted works in  
 25 violation of Plaintiffs' exclusive rights under the Copyright Act, 17 U.S.C. §§  
 26 106, 501. The scope of the infringement is massive, encompassing millions of  
 27 Plaintiffs' sound recordings.  
 28

1 61. Plaintiff is informed and upon such information alleges according  
2 to the fact ("AT&T") are liable as contributory infringers for the  
3 copyright infringement committed through its network, by Defendants because  
4 Defendants had actual knowledge of specific acts of the infringement (Exhibit A).  
5 *Napster Inc.*, 239 F.3d at 1021. Plaintiff provided to Defendants the link to the  
6 tiles that were being infringed, who infringed them, and when the infringement  
7 occurred.

8  
9 62. Plaintiff is informed and upon such information alleges according  
10 to the fact ("AT&T") failure to act upon the emails they received  
11 regarding their "aggregators" infringing Plaintiffs copyright and receiving  
12 a financial benefit, Defendants are contributory liable for the infringement  
13 described herein. Defendants have, in addition to the actions above, provided the  
14 network and support and instructions for the infringement through Defendants  
15 "aggregators" interactive websites, and has refused to exercise their ability to stop  
16 the infringement. Above all Defendants' failure to implement a digital rights  
17 management system promotes" infringement.

18 63. Plaintiff is informed and upon such information alleges according to  
19 the fact, through the conduct described above, Defendants are contributory  
20 liable for the infringement described herein. Each violation of each Plaintiff's  
21 rights in and to each copyrighted sound recording constitutes a separate and  
22 distinct act of copyright infringement. Defendants' infringement has caused  
23 substantial damage and harm to Plaintiff. As a direct and proximate result of  
24 Defendants' infringement, Plaintiff is entitled to statutory damages under 17  
25 U.S.C. § 504(c) for each of Plaintiff works that have been infringed through  
26 Defendants network. Defendants' infringement is and has been willful, intentional,  
27 purposeful, and in disregard of the rights of Plaintiffs'. The Court should therefore  
28

1 increase the award of statutory damages to up to \$150,000 per infringed works.

2  
3 64. Plaintiff is informed and upon such information alleges according to  
4  
5 the fact. The identities of the infringed works and the total number of infringed  
6 works will be determined during discovery, and the pleadings adjusted  
7 accordingly. As an alternative to statutory damages (and for infringed works that  
8 do not qualify for statutory damages if any), Plaintiff at his election prior to profits  
9 of the Defendants attributable to the infringement. 17 U.S.C. § 504(a)-(b). Plaintiff  
10 is entitled to cost, including reasonable attorneys' fees, pursuant to 17 U.S.C. §  
11 505. Defendants' conduct has caused harm, and unless enjoined by this Court, will  
12 continue to cause Plaintiff great and irreparable injury that cannot be fully  
13 compensated or measured in money.

14  
15 65. Plaintiff is informed and upon such information alleges according  
16 to the fact, Plaintiff have no adequate remedy to law. Pursuant to 17 U.S.C § 502,  
17 Plaintiff is entitled to a permanent injunction prohibiting further infringement of  
18 Plaintiffs' copyright. At all times relevant to this action, ("AT&T") have had the  
19 right and ability to control and/supervise the infringing conduct of their  
20 "aggregators" subscribers, and (ii) have had a direct financial interest in, and  
21 derived substantial financial benefit from, the infringement of Plaintiff's  
22 copyrighted sound recordings. Plaintiff has suffered economic damage and  
23 irreparable harm as a result of Defendants unfair acts hereon.

24  
25 **COUNT IV**  
26 **(FOURTH CAUSE OF ACTION VICARIOUS**  
27 **COPYRIGHT INFRINGEMENT 17 U.S.C. §106)**  
28



1       66.       Plaintiff reallege and incorporate by reference each and every  
2       allegation set forth above within paragraphs 1 through 38 and 39 through 65,  
3       inclusive, as through fully stated herein.

4       67.       Plaintiff is informed and upon such information alleges according to  
5       the fact, ("AT&T") "aggregators" subscribers, customers and/ or users AT&T  
6       subscribers, customers and/or users purchasing and downloading Plaintiff's sound  
7       recordings through AT&T's network, have directly infringed and are directly  
8       infringing Plaintiffs' copyrights on a daily a basis by, for example purchasing  
9       copying sound recordings embodying Plaintiffs' copyright Act, 17 U.S.C. §§106,  
10       501. The scope of the infringement is massive, encompassing millions of  
11       Plaintiffs' sound recordings. Defendants are liable as vicarious infringers for the  
12       copyright infringement committed via Defendants network.

13  
14       68.       Plaintiff is informed and upon such information alleges according to  
15       the fact, Defendants have the right and ability to supervise the infringing activity"  
16       and had a direct financial interest in the activity.

17       69.       Plaintiff is informed and upon such information alleges according to  
18       the fact, at all times relevant to this action, ("AT&T") (i) have the  
19       right and ability to control and/supervise the infringing conduct of their  
20       "aggregators" and/or AT&T subscribers, and (ii) have had a direct financial  
21       interest in, and derived substantial financial benefit from, the infringement of  
22       Plaintiff's copyrighted sound recordings via the ("AT&T") network. Defendants'  
23       ability to not supervise and control the infringing activities of their aggregators  
24       subscribers customers and/or AT&T subscribers, customers user is further  
25       evidence by the facts alleged herein. Defendants derived direct and substantial  
26       benefit from infringement, including offering for sale on their network and/or their  
27       "aggregators" website, the value of which is based essentially so subscribers could  
28

1 purchase and download Plaintiff's sound recordings.

2  
3 70. Plaintiff is informed and upon such information alleges according to  
4 the fact, the financial benefit derived by Defendants' is further evidence by the  
5 facts alleged herein. ("AT&T") has or have the ability to control the infringing act  
6 of its "aggregators" because they have a contractual right to exclude an aggregator  
7 for any reason, Ninth Circuit, in Fonovisa v. Cherry Auction. Additionally  
8 ("AT&T") had a financial interest in the infringing acts because their billing  
9 system are aligned.

10  
11 71. Plaintiff is informed and upon such information alleges according to  
12 the fact, ("AT&T") company instruction to Aggregators Consent Management  
13 policy of Non Compliance For each violation, AT&T reserves all rights and  
14 remedies under its agreements with aggregators. These rights and remedies may  
15 include (a) suspending existing short codes, (b) restricting aggregators from  
16 provisioning new short codes and campaigns, and/or (c) terminating the agreement  
17 between AT&T and the aggregator.

18 72. Plaintiff is informed and upon such information alleges according  
19 to the fact, through the conduct described above, Defendants are vicariously  
20 liable for the infringement described herein. Each violation of each of Plaintiffs'  
21 rights in and to each copyright sound recordings composition constitutes a separate  
22 and distinct act of copyright infringement. Defendants' infringement has caused  
23 substantial damage to Plaintiff. As a direct and proximate result of Defendants'  
24 infringement, Plaintiff is entitled to statutory damages under 17 U.S.C. § 504(c)  
25 for each of Plaintiff works that have been infringed through Defendants network.  
26 Defendants' infringement is and has been willful, intentional, purposeful, and in  
27 disregard of the rights of Plaintiffs'. The Court should therefore increase the award  
28

1 of statutory damages to up to \$150,000 per infringed works.

2  
3 73. Plaintiff is informed and upon such information alleges according  
4 to the fact. The identities of the infringed works and the total number of

5  
6 infringed works will be determined during discovery, works that do not qualify  
7 for statutory damages in any way), Plaintiff at his election prior to profits of  
8 the Defendants attributable to the infringement. 17 U.S.C. § 504(a)-(b).

9 Plaintiff is entitled to cost, including reasonable attorneys' fees, pursuant to  
10 17 U.S.C. § 505. Defendants' conduct has caused harm, and unless enjoined  
11 by this Court, will continue to cause Plaintiff great and irreparable injury  
12 that cannot be fully compensated or measured in money. Plaintiff have  
13 no adequate remedy to law. Pursuant to 17 U.S.C § 502, Plaintiff is entitled  
14 to a permanent injunction prohibiting further infringement of Plaintiffs'  
15 copyright. At all times relevant to this action, ("AT&T") have had the  
16 right and ability to control and/supervise the infringing conduct of their  
17 aggregators subscribers, and (ii) have had a direct financial interest in, and derived  
18 substantial financial benefit from, the infringement of Plaintiff's copyrighted  
19 sound recordings. Plaintiff has suffered economic damage and irreparable harm as  
20 a result of Defendants unfair acts hereon.

21  
22 **COUNT V**

23 **(FIRTH CAUSE OF ACTION COMMON LAW**

24 **COPYRIGHT INFRINGEMENT)**

25  
26 74. Plaintiff reallege and incorporate by reference each and every  
27 allegation set forth above within paragraphs 1 through 38 and 39 through 73,  
28 inclusive, as through fully stated herein.

1  
2 75. Plaintiff is informed and upon such information alleges according  
3 to the fact, Plaintiff's copyrighted sound recordings PA 1-633-253, is subject to  
4 common law copyright protection under Ohio. Plaintiff is the owner of a valid  
5 copyright protected by common law. Plaintiff possesses the exclusive rights to  
6 sell, copy, distribute and perform these sound recordings. The infringement of  
7 Plaintiff rights by ("AT&T") network in each of its sound recordings. The  
8 infringement of Plaintiff's rights by ("AT&T") in each of its sound recordings  
9 constitutes a separate and distinct act of infringement. As a direct and proximate  
10 result of Defendants violation of Plaintiffs' rights in and to the sound recordings,  
11 Plaintiff has suffered damages in an amount to be proven at trial. Plaintiff is  
12 entitled to recover all proceeds and other compensation received or to receive by  
13 Defendants arising from its infringement of Plaintiffs' sound recordings, and is  
14 entitled to an accounting to ascertain the amount of such profits and compensation.  
15

16 76. Plaintiff is informed and upon such information alleges according to  
17 the fact, Defendants acts of infringement are willful, intentional and  
18 purposeful, in disregard of Plaintiffs' rights, and Plaintiff is entitled to punitive  
19 and statutory damages in addition to actual damages. Plaintiff is further entitled to  
20 cost and attorney fees pursuant to 17 U.S.C § 505. Defendants and/or their  
21 "aggregators" subscribers, customers and/or users purchasing and downloading  
22 Plaintiffs' copyrights on a daily basis by, for example purchasing copying  
23 Plaintiffs' sound recordings have through the AT&T network directly infringed  
24 Plaintiffs' copyrights on a daily basis by, for example purchasing copying sound  
25 recordings embodying Plaintiffs' copyrighted works in violation of Plaintiff's  
26 copyright. Plaintiff has suffered economic damage and irreparable harm as a  
27 result of Defendants unfair acts hereon.  
28

**COUNT VI**  
**(SIXTH CAUSE OF ACTION FEDERAL UNFAIR**  
**COMPETITION UNDER LANHAM ACT 15.U.S.C§ 125))**

77. Plaintiff reallege and incorporate by reference each and every allegation set forth above within paragraphs 1 through 38 and 39 through 76, inclusive, as through fully stated herein.

78. Plaintiff is informed and upon such information alleges according to the fact, Defendants' ("AT&T") "aggregators" unlawful use of Plaintiff's Copyrighted sound recordings were ("AT&T") gained profits in connection unlawfully participating in the infringing sales of millions of downloads. Defendants have contributory infringed upon the sound recordings of Plaintiff's rights after being aware its "aggregators" were infringing and failing to do anything.

79. Plaintiff is informed and upon such information alleges according to the fact, the acts of ("AT&T") alleged above were committed willfully, with knowledge of Plaintiff's rights and with the acts of defendants aggregators make know to Defendants. Plaintiff has refrained from further development of the brand name sound recordings. These infringement acts damaged the good will of the name herewith. These actions allowed Defendants to gain an unfair competitive advantage over Plaintiff's continued development of any additional sound recordings and deceived and mislead Plaintiff and the public.

80. Plaintiff is informed and upon such information alleges according to the fact, the acts of Defendants alleged above were committed willfully, with full knowledge of Plaintiff's rights with intention of causing harm to Plaintiff. The acts

1 of Defendants alleged above were committed willfully, with full knowledge of  
2 Plaintiff's rights with the intention of misappropriating and wrongfully receiving  
3 revenue for the works of the sound recordings of Plaintiff which effected the  
4 valuable goodwill and reputation of Plaintiff's Copyright sound recordings.  
5 Plaintiff have suffered economic damage and irreparable harm as a result of unfair  
6 competition in Defendants practice and deceptive use of Plaintiff's Copyrighted  
7 sound Recording . Plaintiff has suffered economic damage and irreparable harm as  
8 a result of Defendants unfair acts hereon.  
9

10 81. Plaintiff is informed and upon such information alleges according to  
11 the fact, Plaintiff has suffered damages in an amount to be proven at  
12 trial. Plaintiff is entitled to recover all proceeds and other compensation received  
13 by Defendants arising from its Unfair Competition Under Lanham Act of  
14 Plaintiffs' mark in commerce, and is entitled to an accounting to ascertain the  
15 amount of such profits and compensation. Defendants acts are willful, intentional  
16 to cause confusing to the public which was purposeful, in disregard of Plaintiffs'  
17 rights, and Plaintiff is entitled to punitive and statutory damages in addition to  
18 actual damages. Plaintiff is further entitled to cost and attorney fees pursuant to 17  
19 U.S.C § 505. Defendants "aggregators" subscribers, customers and/or users  
20 purchasing and downloading Plaintiffs' copyrights on a daily basis by, for  
21 example purchasing copying Plaintiffs' sound recordings through the AT&T  
22 network directly violated the laws governing Unfair Competition Under the  
23 Lanham Act on a daily basis by, for example purchasing copying sound  
24 recordings embodying Plaintiffs' mark in violation of Plaintiff's copyright.  
25  
26  
27  
28



**COUNT VII****(SEVENTH CAUSE OF ACTION UNFAIR  
COMPETITION UNDER OHIO LAW § 4165.02 )**

82. Plaintiff reallege and incorporate by reference each and every allegation set forth above within paragraphs 1 through 38 and 39 through 81, inclusive, as through fully stated herein.

Plaintiff is informed and upon such information alleges according to the fact, ("AT&T") contributory acts of infringement, after having had full knowledge of its "aggregators" having received cease and desist letters, was unlawful and a willful act. The conduct of Defendants, as alleged herein, constitutes unfair competition under the common law of Ohio.

83. Plaintiff is informed and upon such information alleges according to the fact, Plaintiff has suffered damages in an amount to be proven at trial. Plaintiff is entitled to recover all proceeds and other compensation received or to receive by Defendants arising from its Unfair Competition Under Ohio Law of Plaintiffs' sound recordings, and is entitled to an accounting to ascertain the amount of such profits and compensation. Plaintiff has suffered economic damage and irreparable harm as a result of Defendants unfair acts hereon.

Defendants acts are willful, which was purposeful, in disregard of Plaintiffs' rights, and Plaintiff is entitled to punitive and statutory damages in addition to actual damages. Plaintiff is further entitled to cost and attorney fees pursuant to 17 U.S.C § 505. Defendants and/or their "aggregators" subscribers, customers and/or users purchasing and downloading Plaintiffs' copyrights on a daily basis by, for example purchasing copying Plaintiffs' sound recordings through the AT&T network directly violated the laws governing Competition Under Ohio Law.

**COUNT VIII**  
**(EIGHTH CAUSE OF ACTION DECEPTIVE AND UNFAIR**  
**TRADE PRACTICES UNDER OHIO LAW**  
**OHIO REV. CODE § 4165.02)**

84. Plaintiff reallege and incorporate by reference each and every allegation set forth above within paragraphs 1 through 38 and 39 through 83, inclusive, as through fully stated herein.

85. Plaintiff is informed and upon such information alleges according to the fact, Defendants ("AT&T") unlawful profits from its "aggregators" sales of Plaintiff's copyrighted sound recordings, after having had full knowledge of cease and desist letters, and failed to stop such acts when it had the ability and control to stop the acts.

86. Plaintiff is informed and upon such information alleges according to the fact, Defendants conduct has been deliberate and willful and has been committed with the intent to evade Plaintiff getting proper residuals owed, who has suffered economic damage and irreparable harm as a result of Defendants unfair practices associated hereon.

87. Plaintiff is informed and upon such information alleges according to the fact, Plaintiff has suffered damages in an amount to be proven at trial. Plaintiff is entitled to recover all proceeds and other compensation received or to receive by Defendants arising from its Deceptive and Unfair Trade Practices of Plaintiffs' sound recordings, and is entitled to an accounting to ascertain the amount of such profits and compensation. Plaintiff has suffered damages in an amount to be

1 proven at trial. Plaintiff is entitled to recover all proceeds and other compensation  
2 received or to receive by Defendants arising from its Deceptive and Unfair Trade  
3 Practices Unjust Enrichment of Plaintiffs' sound recordings, and is entitled to an  
4 accounting to ascertain the amount of such profits and compensation. Plaintiff is  
5 further entitled to cost and attorney fees pursuant to 17 U.S.C § 505.

### 6 **COUNT VIII**

#### 7 **(NINTH CAUSE OF ACTION UNJUST ENRICHMENT)**

8 . 88. Plaintiff reallege and incorporate by reference each and every  
9 allegation set forth above within paragraphs 1 through 38 and 39 through 88,  
10 inclusive, as through fully stated herein.

12 89. Plaintiff is informed and upon such information alleges according  
13 to the fact, Defendants ("AT&T") was unjustly enriched at Plaintiffs'  
14 expense under circumstance such that equity and good conscience  
15 require Defendants to make restitution to Plaintiff. Plaintiff became creditors  
16 of Defendants when Defendants committed torts against Plaintiff. Plaintiff  
17 has suffered economic damage and irreparable harm as a result of  
18 Defendants unfair acts hereon.

20 90. Plaintiff is informed and upon such information alleges according  
21 to the fact ,Plaintiff has suffered damages in an amount to be proven at  
22 trial. Plaintiff is entitled to recover all proceeds and other compensation  
23 received or to receive by Defendants arising from its Unjust Enrichment  
24 of Plaintiffs' sound recordings, and is entitled to an accounting to ascertain  
25 the amount of such profits and compensation. Plaintiff has suffered damages in  
26 an amount to be proven at trial. Plaintiff is entitled to recover all proceeds  
27 and other compensation received or to receive by Defendants arising from  
28 its Unjust Enrichment of Plaintiffs' sound recordings, and is entitled to

1 an accounting to ascertain the amount of such profits and compensation.

2 Plaintiff is further entitled to cost and attorney fees pursuant to 17 U.S.C § 505.

**PRAYER FOR RELIEF**  
**(CONSTRUCTIVE TRUST ACCOUNTING)**

Defendants hold those commercial profits and personal gains which have accrued to those as a result of infringement and other wrongful acts described herein as constructive trustees of those commercial profits and personal gains, for the benefit of Plaintiff. Plaintiff seek an accounting of said funds, and an order declaring that Defendants hold said funds in trust for Plaintiff.

WHEREFORE, Plaintiff respectfully request judgment against Defendants as follows:

1. For general damages in an amount to be proven at trial;
2. For punitive damages in an amount to be proven at trial sufficient to punish and deter Defendant from engaging in such activity in the future;
3. For the maximum statutory damages under 17 U.S.C. § 504(c), in the amount of 150,000 with respect to each timely registered work that was infringed.
4. For damages and disgorgement of lost profits, in the amount to be proven at trial;
5. For injunctive relief as against Defendants;
6. For an accounting;
7. For an order declaring that Defendants hold funds which they have gained as a

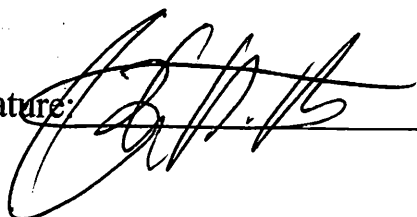
1 result of their wrongful acts as constructive trustees for the benefit of Plaintiff;  
2

3 8. For any applicable and appropriate pre-and post-judgment interest;

4 9. For any other relief that the Court deems just and proper.  
5  
6

7 DATED: February 6, 2014

8 Respectfully submitted,  
9

10 Signature:  \_\_\_\_\_

Date: 2/6/2014

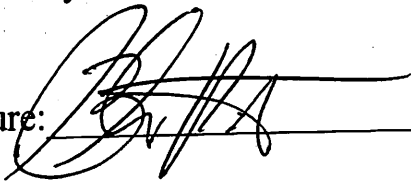


**DEMAND FOR JURY TRIAL**

Plaintiff hereby demand a jury as to all issues properly so tried.

DATED: February 3, 2014

Respectfully submitted,

Signature: 

Date: 2/6/2014

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing instrument has been served via first class U.S. mail, postage prepaid, upon all Defendant(s).

Mobile Streams, Inc.

Mobilefunster, Inc.

Simon Buckingham

Incorporating Services, Inc.

247 West 36<sup>th</sup> Street 301

3500 S Dupont Hwy

New York, NY 10018

De 19901

Funmobile, LTD

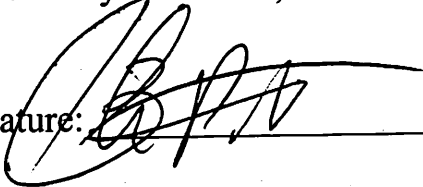
Christian Kwo-Leu Yau Heilesen

29/F, One Kowloon

No 1, Wang Yuen Street

Kowloonbay, Hong Kong

Respectfully submitted,

Signature: 

Date: 2/6/2014

Blake Best

Pro Se, Plaintiff

5392 Northbend Road

Cincinnati, Ohio 45247